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UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr.
GENERAL

CRC/C/SR.162
4 October 1994

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Seventh session

SUMMARY RECORD OF THE 162nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 September 1994, at 10 a.m.

Chairperson: Mrs. BADRAN

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GE.94-19081 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Indonesia (continued) (CRC/C/3/Add.10 and Add.26)

1. Mr. HAMMARBERG observed the previous meeting had provided some enlightenment on the issue of declarations as opposed to reservations. The Committee would nevertheless welcome the further assurance that the Indonesian representative's statement at that meeting implied that no contradiction was perceived between the Constitution and articles 1, 14, 16, 17, 21, 22 and 29 of the Convention, and that the reference to the Constitution in the declaration made at the time of ratification was not relevant to their applicability in the land of Indonesia.

2. Recalling the occasionally heated discussion at the Committee's fourth session on the violent incident at Dili in November 1991, he commended the Indonesian Government for inviting the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit East Timor; his report to the Commission on Human Rights was awaited with keen interest. The Committee's own concern at the incident was obviously justified, in view of the large numbers of children who had died (43), or been injured (37) or arrested (10) in the course of the incident or who had subsequently disappeared and were still unaccounted for (26). In response to criticisms that had been levelled against the Committee in the Commission, he said that its members did not claim to be infallible; in the present instance, however, they firmly believed their concern to be legitimate and fully within the framework of the Convention.

3. He noted with satisfaction the Indonesian delegation's acknowledgement of the importance of technical assistance and expert advisory services, and of international cooperation and assistance as the main pillars for implementation of the Convention. The Committee would welcome specific proposals from Indonesia in that regard.

4. Mr. WIDODO (Indonesia) expressed appreciation for Mr. Hammarberg's understanding of his country's position. In the final analysis, the Constitution of the Republic of Indonesia contained no provision that ran counter to those of the Convention. Imminent action designed to confirm that position included the drafting of a letter to be addressed to the Secretary-General of the United Nations.

5. It was his recollection from the discussion a year before that the Committee had acknowledged the Indonesian Government's description of the Dili incident as a tragic event and its undertaking to do everything in its power to ensure that there was no recurrence. The Special Rapporteur was indeed seeking further information on the handling of the incident, and his findings were awaited with interest by the Indonesian authorities. His country had been further gratified by the consensus agreement in connection with the situation of human rights in East Timor reached by the Commission on Human Rights at its fiftieth session. On the specific question of persons still unaccounted for, the Indonesian Minister for Foreign Affairs had informed the Secretary-General late in 1993 that the location or fate of the 56 or so

persons still missing was being actively investigated, inter alia by the Special Rapporteur and other interested parties, including the Church. It was thought that some of the persons involved might have fled into the inhospitable forest and perished there, or that they had fled to other parts of the country. Two or three formerly missing persons had given themselves up to the local authorities, and it had been publicly announced that they would be treated with clemency. He reminded the Committee that the good offices of the Secretary-General were already engaged in the quest for a settlement to the question of East Timor.

6. He confirmed that Indonesia, as a disadvantaged country, attached great importance to expert advisory services and technical cooperation in its development efforts. International cooperation within the United Nations system was demonstrably central to its foreign policy. That was obviously true in the case of the promotion and protection of the rights of the child.

7. In conclusion, he acknowledged that there remained a certain amount of dysfunctioning in communication between the different departments and sectoral institutions that constituted the national administrative network. The second round of dialogue with the Committee had impressed on him that a common language must be found in which to describe Indonesia's present circumstances, plans and future prospects, notably in the legislative domain. In sum, he considered that the Committee and his delegation could claim to have together made progress in the implementation of the Convention in Indonesia.

8. Mrs. SANTOS PAIS apologized for her absence from the previous meeting and sought the indulgence of her colleagues in returning to matters already debated at length.

9. She understood that the Indonesian delegation had announced a revision of its initial reservations, the withdrawal of most of them and their replacement by a general declaration on some points at issue. However, a change of nomenclature did not necessarily signify a change of content, and she drew attention in that regard to the provisions of article 2 ("Use of terms") of the Vienna Convention on the Law of Treaties. If a new declaration merely rephrased reservations that were of concern to the Committee, then the latter would have no option but to re-open the discussion yet again.

10. During the first round of dialogue, the Indonesian delegation had called on the Committee to refrain from functioning as an investigative mechanism and to work for reconciliation. She considered that it was indeed performing the latter function and was glad that the earlier criticism seemed to have been withdrawn. The Committee's approach had also been described by Indonesia as overly "legalistic". But had not the delegation itself dwelt at length on the subject of legislation, making the welcome announcement that reform was under way? Moreover, the Convention accorded pride of place, in article 4, to legislative measures for the implementation of the rights of the child; although those were of course by no means the only measures that should be considered by the Committee and States parties alike, legislation was essential as the framework for governmental policies, mechanisms and programmes, including programmes to bring the existence of the rights to the attention of the public.

11. Turning again to the Vienna Convention on the Law of Treaties, she cited the provision to the effect that a party might not invoke the provisions of its internal law as a justification of its failure to perform a treaty. She noted with satisfaction the statement in the supplementary report of Indonesia (CRC/C/3/Add.26) that implementation would be "in accordance with the national laws", although that suggested the supremacy of the latter over the Convention itself. Moreover, Indonesia had joined the consensus at the World Conference on Human Rights on the duty of States, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms, and on the unquestionably universal nature of those rights and freedoms.

12. On the controversial issue of the administration of juvenile justice, it was her understanding that no special arrangements for children existed, in relation to either the functioning of the courts or legal aid. Documented instances of the deprivation of liberty were a matter of particular concern to her, especially in connection with peaceful demonstrations and assemblies. The apparently ubiquitous presence of the military in the judicial system gave rise to more general disquiet, and in that connection she recalled that Indonesia had been urged by several bodies within the United Nations system to consider separating the military and civil branches.

13. On specific matters, she asked for more detailed information on the following: grounds for detention in accordance with the law; the current status of the anti-subversion law; the existence or otherwise of special courts, laws and procedures recognizing as a priority the placement of children in institutions; the recognition and practical observance of presumption of innocence, with special reference to the pre-trial detention of minors; and finally, any measures envisaged to ensure the full independence of the Judiciary (on record as a major concern of the Special Rapporteur on the question of torture as a result of his visit to Indonesia and East Timor).

14. She reiterated her continuing concern about the situation in East Timor. She had noted the statement that every effort was being made to ensure that incidents such as that at Dili did not recur. Yet, in April and July 1994, further violent events had occurred, illustrating the persistence of a situation in which the fundamental human right of peaceful demonstration, for children as well as adults, was still not recognized. That being said, there were of course positive signs of a new openness and genuine cooperation between Indonesia and the international community; the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions was one such sign. But the Commission on Human Rights had encouraged the Indonesian authorities to issue further invitations to other United Nations bodies. She hoped that they would be forthcoming.

15. In conclusion, she listed other areas of special concern to her, including child labour; the lack of health services, particularly in rural areas; and the insufficient allocation of resources to the social sector (especially when compared with Indonesia's military expenditure). She very much hoped that a progress report in the not-too-distant future would show that all the reforms and remedial measures that had been announced were indeed bearing fruit.

16. Miss MASON noted that Indonesia's reservation on article 14 of the Convention appeared to have been withdrawn, and drew attention to section III of the supplementary report (CRC/C/3/Add.26) on "Implementation of the right of freedom of religion". Given the declaration that religious freedom, tolerance and coexistence prevailed in Indonesia, how could persistent reports of the continued persecution of persons practising the Baha'i religion be explained?

17. Mr. WIDODO (Indonesia) said his delegation had tried to make it clear, with regard to Indonesia's position on articles 1, 14, 16, 17, 21, 22 and 29, that it had no intention of revising any so-called "reservations". Careful inquiry following the dialogue with the Committee a year before had shown that there had never been any intention on the part of Indonesia to enter reservations at the time of ratification of the Convention. It had merely accompanied ratification with a declaration. He once again welcomed Mr. Hammarberg's interpretation of that matter and said that it was the sincere intention of the Indonesian Government to withdraw the declaration made at the time of ratification.

18. Mrs. Santos Pais had perhaps misunderstood the Indonesian delegation's reference, in the earlier round of discussion, to investigative and reconciliatory functions; in opposing the former and advocating the latter, it had been referring to the Convention itself, and not to the Committee. On the question of a "legalistic" approach, he generally shared the analysis made by Mrs. Santos Pais. Moreover, the previous day's discussion had - he believed - underscored the importance of looking at the plight of children from the standpoint of social justice. That was certainly Indonesia's position.

19. Concerning the administration of juvenile justice, which he had referred to at the previous meeting, he offered to make available a paper on the subject prepared by a leading juvenile court judge in his country. He confirmed that a new juvenile criminal code was currently under preparation.

20. Referring to Mrs. Santos Pais's comments concerning the military/civilian dichotomy in the legal system, his Government was aware that, at the international level, campaigns had been launched to portray it as being of an authoritarian and military nature. While the current forum was not an appropriate one in which to discuss the subject in detail, it might none the less be pointed out that, while his Government respected the right of such campaign organizers to express themselves, it could not share their views. Concerning legislation on security, his Government reserved the right to uphold the principles of national stability, security and integrity in order to achieve progress towards social justice and national prosperity.

21. It was questionable whether the Committee was an appropriate forum in which to discuss in detail the matter of East Timor. However, in order to demonstrate the spirit of openness prevailing in his Government with regard to the situation in that province, he referred to a recent visit by a group of British parliamentarians and that group's statement that progress was being made, and a similar visit currently under way by a group of Australian parliamentarians.

22. Concerning demonstrations, his Government fully subscribed to the principle of freedom of expression for all lawful purposes. It followed, therefore, that appropriate measures must be taken in the case of any demonstration for other purposes. Committee members would recall that he had referred at the previous meeting to the background and circumstances of the incident mentioned.

23. In reply to Miss Mason's question about the Baha'i community, he assured the Committee that there was freedom of religion and religious tolerance in Indonesia, and that the Government subscribed to those freedoms, as it did to the freedom of expression, for all lawful purposes. There had not been any case of a member of an officially recognized religion being persecuted in his country. The Government was aware, however, that critical campaigns had been launched outside the country; it maintained a position of openness in that respect and made every effort to ensure that its principles were upheld.

24. Mrs. SANTOS PAIS, thanking the Indonesian delegation for its replies, observed that human rights could not be interpreted strictly in the light of national security or lawfulness of purpose. While any mention of fundamental freedoms must inevitably take into account inherent limitations, the latter must not be arbitrarily defined. In that context, she hoped that the dialogue between the State party and the Committee would encourage further reflection on human rights and fundamental freedoms.

25. Mgr. BAMBAREN GASTELUMENDI, noting that the written reports submitted by Indonesia stressed the importance of cultural and historical values as well as solidarity, mutual aid and popular participation, first requested information on any popular organizations which might be playing a role in promoting the rights of the child and in disseminating relevant information in the various national languages. Secondly, he asked what was the minimum age for civil liability.

26. Mr. WIDODO (Indonesia) said, in response to the previous speaker, that on the occasion of the National Day of the Child, celebrated some months previously, the Government had launched a nationwide Happy Family Programme. That programme - which should be seen in the context of Indonesia's tradition of Pancasila and the principle, dating back to 1928, of "one country, one nation, one language" - focused not only on children, but particularly on parents, on the premise that there was a mutual relationship between their situations and conditions. It was incumbent upon all sectors of the community, in particular groups operating at grass-roots level, to implement the programme. In urban areas, an increasing number of seminars had been held on related subjects while, in rural areas, women's groups were playing an active part. In addition, television and radio networks were broadcasting relevant programmes. The Ministry of Education was also playing a very active role.

27. Mr. HAMMARBERG said, in his concluding remarks, that as a general rule the Committee endeavoured to engage in a frank exchange of views on areas relating to the actual situation of children in an individual country and avoided discussion which might needlessly involve sensitive matters of national prestige. If the Committee had made reference to the events in Dili in 1991 - during which over 100 children had been killed or arrested or had

disappeared, it was because the signals received by it seemed to be mixed, on the one hand, the President of Indonesia had ordered a special inquiry and an invitation had been extended to a special rapporteur to visit the country; on the other, the events were referred to merely as an "incident" and some of the perpetrators involved had received lighter sentences than some of the organizers of the demonstration. As a result, discussion on the matter had been extended in an effort to confirm that there was a will to ensure that national security forces would not act in such a way in the future.

28. Several positive elements had emerged from the current discussion: there was a sense of cooperation between the Government and NGOs as well as international organizations, and it was clear that a process of legal reform was under way. At the same time, he had noticed that basic labour legislation might not be valid, which might well have an adverse effect on the protection of children in regard to employment. Clear provisions concerning the minimum age for employment and establishing regulations on employment conditions for young people up to 18 years of age, in accordance with ILO standards, were desirable.

29. Mr. KOLOSOV expressed satisfaction at the current dialogue, from which it had become clear that there was no basic disagreement between the State party and the Committee on the fact that human rights matters could no longer be regarded solely in the domestic context and that the international community had a legitimate right to participate in discussion on human rights and fundamental freedoms with member States. Concerning the exercise of such rights and freedoms for lawful purposes, there likewise seemed to be no disagreement over the fact that "lawful" in that context must be viewed as referring to not only the provisions of national legislation but also those of international law, given a common understanding that the principles of the Universal Declaration had become a customary rule of international law.

30. Looking back to the preliminary observations made by the Committee subsequent to consideration of Indonesia's initial report, it must be noted that most concerns raised at that time persisted, particularly in regard to the need for legislative reform in order to provide increased protection of children's rights, to reflect the provisions of the Convention in national legislation and to provide a national legal framework for the implementation of those provisions.

31. Some doubt remained concerning the question of marriageable age, which, according to the initial report, was 16 for girls and 19 for boys. While the Committee had been informed of the decision of the Minister for Internal Affairs to encourage the postponement of marriage until a later age, there appeared to be no legal amendment on that point. Consequently, there still seemed to be some discrepancy concerning the age at which a person was no longer a minor and marriageable age. There also appeared to be gender discrimination in relation to marriageable age. An area for future discussion would no doubt be the harmonization of national legislation with the provisions of the Convention.

32. Mrs. SANTOS PAIS said that most of the concerns listed in the Committee's preliminary observations on the report of Indonesia persisted. She believed it would be helpful for Indonesia and for the children subject to Indonesian

jurisdiction, as well as for the Committee, to have a progress report within two years, not only to encourage the Government to consider the concluding observations adopted by the Committee as guidelines for the future, but also to enable the Committee to assess how far practice in Indonesia was in conformity with the Convention.

33. One of those persisting concerns was the question of social mobilization, information and training. While the recognition of rights and freedoms was a positive development, implementation of those rights was essential to enable them to become a reality. It was also essential that the beneficiaries of those rights - first, the children themselves, and then parents, professional groups and society at large - should understand the principles and provisions of the Convention and put them into effect in everyday life. The Committee had been informed that training for specific professional groups on the Convention and other international United Nations human rights instruments had not yet been put into effect. Such training, carried out in cooperation with the United Nations system and the international NGOs working in the country, should be a priority and cover a wide range of topics.

34. Another concern that remained was how to strengthen popular participation and enhance public scrutiny of government policies. Criticism, besides pointing out defects, could also point the way to change and improvement. If the voices of dissent were silenced, a country lost the capacity to improve and to be open to the outside world. With regard to popular participation at the local level, including in health and education, mention had been made of a Happy Family Programme. She noted that the Committee had received reports referring to the lack of participation by women and their relegation to a second-class role in society, particularly in rural areas. For real family happiness, women must be enabled to play a part in decision-making.

35. It was encouraging that a start had been made on legal reform. It was important, however, to take into consideration not only article 4 of the Convention but also the general principles: non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development, all of which implied cultural openness and the toleration of differences.

36. Another remaining area of concern was the allocation of resources. It was essential for the social sector to be reinforced. Not only resources from the national budget but also help from abroad should be channelled into promoting the social sector and, with it, the rights of the child. There was still a markedly uneven distribution of wealth and a persistent disparity between rural and urban areas.

37. Special emphasis should be placed on the administration of juvenile justice. That was an area in which the Government might consider seeking advisory assistance. She stressed the importance of establishing an independent mechanism to consider complaints by children, particularly cases of ill-treatment. The Committee had been told in the additional information provided that protests could be made to the personnel of correctional facilities, but those facilities needed to be open to outside inspection in order to ensure impartiality and eliminate arbitrary or politically motivated criteria.

38. She regretted that neither Indonesia nor East Timor could be said to be open to the outside world, when visitors to the country were admitted on a selective basis and visas granted or denied according to the presumed purpose of the visit. There should be greater openness to NGOs and journalists, as well as greater respect for freedom of expression and freedom of the media in Indonesia, where three main newspapers had recently been closed down.

39. She regretted that she had not found the information on the Indonesian Government's reservations to the Convention convincing. The claim that Indonesia had not entered any reservations but only made a declaration could not stand up in the light of the provision of the Vienna Convention on the Law of Treaties whereby a unilateral statement, however phrased or named, which excluded or modified the legal effects of certain provisions of a treaty in their application to the State concerned constituted a reservation.

40. Mgr. BAMBAREN GASTELUMENDI said that he shared the views expressed by the previous speakers. From the standpoint of the Convention, he found the social aspect of particular concern. One of the principles of Pancasila was social justice for the whole of the Indonesian people. Unfortunately, the great economic development of recent years had not been accompanied by comparable social development. A situation in which 72 per cent of the population lacked basic services constituted a great challenge. The best interests of the children demanded a greater allocation of funds to social programmes.

41. Mr. HAMMARBERG observed that three concrete short-term recommendations had emerged from the discussion. First, there seemed to be a need to avoid any confusion in future regarding Indonesia's ratification of the Convention. The Government should send a new letter to the Secretary-General making the position clear and stating that there were no reservations remaining and that the whole Convention was applicable in the territory of Indonesia. Through that action, other States parties would be informed of the situation. Secondly, in the matter of legal reform, the Committee would like to receive the text of the proposed new legislation. He was sure that the Centre's advisory services would be glad to comment and provide any help that was requested. And thirdly, in the spirit of the statement made by the Indonesian delegation in the Commission on Human Rights, the Government should make concrete proposals to the Centre for Human Rights for closer cooperation. The initiative must come from Indonesia; otherwise there would be no opportunity for the international community to cooperate.

42. Mrs. EUFEMIO said that she derived great hope from the importance attached by the Indonesian Government to the second meeting with the Committee, as shown by its written response and by the presence of officials of the various ministries concerned, and from the frankness of the ensuing discussion. She was particularly encouraged to hear that the Government meant to tighten legislative measures in order to avert the adverse effects of inter-country adoption of children. She suggested that the Government should take the draft Hague Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption as a guideline in drafting the new legislation. She was also heartened by the village programme administered by the PKK to enhance awareness and understanding of the rights of children. The PKK movement was designed for adults, but she hoped that the provisions of the Convention would also be made widely known among children.

43. She agreed that the strategy to disseminate information on the Convention within institutions of higher learning would have a multiplier effect, but stressed that it was also important to concentrate on the training of personnel already working directly with children, such as teachers, social workers, physicians, judges and police officers. The information must be extended to the Administration as a whole, Executive, Legislature and Judiciary. The delegation had acknowledged the need for a different methodology to bring about a change of attitude. If that methodology had not yet been fully developed, the Government could perhaps seek assistance from the Centre's advisory services or experts.

44. The role of the family in reducing the need for children to work in order to support their parents and other family members should be explored and a strategy developed. The Government should strengthen the role of the family, not in a paternalistic way, but in a spirit of partnership and development in furtherance of the rights of the child.

45. She endorsed the remarks of previous speakers on the allocation of resources. The Committee was still concerned about the level of social priorities in the budget. The figures for safe water, sanitation, access to health care and maternal mortality rates were alarming. Budgetary appropriations for family assistance, education and special protective measures needed to be increased. She looked forward, within the next five years, to seeing the fulfilment of the Indonesian Government's intentions in ratifying the Convention on the Rights of the Child.

46. The CHAIRPERSON considered that the Committee's dialogue with the second Indonesian delegation to appear before it had been very fruitful. Although many of the concerns expressed in the preliminary observations subsisted, the process of dealing with some of them had begun. Change could not be expected overnight. She had every hope that the political will for improvement existed and that an effort would be made to deal with the concerns voiced at the current session.

47. Sometimes, in the process of accentuating economic growth, human rights, especially the rights of children, were not given their necessary importance. Governments needed to be careful not to let the social aspects of their policies take a lower priority. The Committee's comments would alert Indonesia and other States in the same position to that danger. The concluding observations would be reproduced by the secretariat of the Centre for Human Rights and sent to the Indonesian Government. She was sure that when Indonesia submitted its next report, many of the concerns would have been answered.

48. Mr. WIDODO (Indonesia) thanked the Chairperson and the Committee on behalf of his delegation. The opportunity for a second round of dialogue had been greatly appreciated; the Committee's input and comments would be invaluable. That the future of a people lay in the future of its children was a view which Indonesia fully shared. His Government was fully committed to the further protection and promotion of all human rights throughout the country, especially the rights of the child.

The meeting rose at 12.15 p.m.